IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.939 OF 2003
WITH
NOTICE OF MOTION NO.842 OF 2002
IN
SUIT NO.436 OF 1999

Mr.Ashok Kumar Agarwal .. Plaintiffs

Vs.

Mr.Ravindra Kumar Agarwal & Ors. ..Defendants

Mr.Snehal Shah i/b Doijofr Phatarphekar and Co. for the plaintiffs

Mr.Naushad Engineer i/b Desai and Diwnaji for defendant no.1

Mr.Girish Manjeshwar i/b R.D.Suvarna for defendant no.5, 9, 19, 20 and 23A.

CORAM : S.U.KAMDAR, J
DATED : 16TH SEPTEMBER, 2005

P.C.:

1. The present motion is taken out for the purpose of appointment of receiver and injunction in respect of properties which are described in Ex.F to the plaint. Ex.F to the plaint describes two properties. The learned counsel for the plaintiff presses relief only in respect of flat at Jolly Maker Apartment, Colaba.

2. The said flat is in possession of defendant no.1. It is the case of the defendant no.1 as set out in affidavit in reply dt.17.9.02 that the said flat has come to his share under oral family arrangement. The said sub para 3 on affidavit in reply is reproduced as under:

> "3. With referee to paragraph 1 of the said Affidavit, I deny that the said flat constitutes HUF property. Hence, the question of my receiving Rs.5.6 lacs towards the HUF property does not arise. I say and submit that the Jolly Maker Apartment I premisses Cooperative Housing Society has advanced an amount of Rs.5.6 lacs, as interest free deposit to members towards upkeep and maintenance of the premises and the said amount of Rs.5 lacs has been expended by me towards the maintenance of my flat being flat no.112-A at Jolly Maker

Apartment I premises Co-operative Society, Cuffe Parade, Mumbai 400 005 (hereinafter referred to as the 'said flat'). Hence, the question of my disclosing the said deposit of Rs.5.6 lacs to the pl;plaintiff or other alleged co-parceners does ot arise. The question of my receiving the said money or failing to account for the same in the books of the HUF estate does not arise."

3. It is not possible at an adinterim stage to accept the case of oral family arrangement on behalf of defendant no.1. Admittedly, the flat was in the name of father before he expired on 12.3.96. There are no documents to indicate that the flat has been transferred either by the legal heir of the deceased father after his death or by the father himself at any point of time during his life time in favour of the defendant no.1.

4. Thus, in my opinion, prima facie case is made out for the purpose of granting necessary reliefs. In so far as reliefs are concerned, the learned counsel for the defendants has contended that in suit for partition no receiver can be appointed at all by the court. The learned counsel has in support of the aforesaid contention relied upon the Division Bench Judgment of Bombay High Court in the case of Govind Narayanrao Desai v. Vallabhrao Narayanrao Desai reported in Vol XII BLR 217. He has also relied upon the Judgment of the Madras High Court in the case of case of T.Krishnaswamy Chetty v. C.Thangavelu Chetty and ors reported in AIR 1955 MADRAS 430 and Judgment of this court in Chandrashekhar Sidramappa Chinchansure v. Bhaurao Sidramappa Chinchansure and Ors. reported in 1983 1 BOM CR 507 interalia laying down the principle on which court receiver should be appointed. I am of the opinion that appointment of court receiver is undoubtedly based on principles set out under Order 40 Rule 1 of CPC. Court Receiver can be appointed on the ground of just and convenience and also in a case of an imminent danger or the waste of the

property.Whether sufficient ground is made out or not for such an appointment or not essentially depends upon the facts of each case. In the present case, admittedly defendant no.1 is in possession of a flat which is situated at Jolly Maker Tower. Flat belongs to HUF of the deceased. Thus all persons are entitled to said flat.In that view of the matter, defendant no.1 alone cannot be permitted to use occupy and possess the said flat in exclusion of other parties without he being put on terms and conditions. Therefore it is necessary that the said property is protected and necessary income be generated for the said HUF towards the use occupation and possession of the said flat by defendant no.1.

5. In that view of the matter, I appoint Court Receiver in respect of said flat bearing no.112A, Jolly Maker Apartment I Premises Co-operative Housing Society Cuffe Parade, Mumbai 400 005. However, the receiver will not dispossess the defendant no.1 but will appoint the defendant no.1 as his agent in respct of the said flat. However, the same will be without security but on payment of

Royalty. Receiver will also not place any board on the said premises. In respect of the amount of Rs.5.6 lacs the learned counsel for defendant no.1 states that he will maintain necessary account of amount received by him pertaining to the aforesaid flat. In view of the dismissal of motion no.842 of 2002, motion 939 of 2003 does not survive. The same is dismissed as infructuous.